

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AUTHORIZING THE POLICE CHIEF TO EXECUTE THE MEMORANDUM OF
UNDERSTANDING WITH THE COUNTY OF SANTA CLARA FOR THE HOLIDAY
DRIVING UNDER THE INFLUENCE CAMPAIGN – AVOID THE 13**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILPITAS AS FOLLOWS,

WHEREAS, there has been submitted to the City Council of the City of Milpitas a proposed Memorandum of Understanding to be entered into by and between the Milpitas Police Department and the County of Santa Clara; and

WHEREAS, said Memorandum of Understanding is attached as Exhibit A and is made a part hereof,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milpitas that the Memorandum of Understanding attached as Exhibit A is approved and that the Police Chief be authorized and directed to execute for and on behalf of said Milpitas Police Department said Memorandum of Understanding.

PASSED AND ADOPTED this ____ day of April 2007, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE COUNTY OF SANTA CLARA AND
THE CITY OF MILPITAS

HOLIDAY DRIVING UNDER THE INFLUENCE CAMPAIGN – AVOID THE 13

FUNDED BY

THE STATE OFFICE OF TRAFFIC AND SAFETY

THIS MEMORANDUM OF UNDERSTANDING, entered into this
5th day of December 2006, by and
between the COUNTY OF SANTA CLARA, hereinafter called "COUNTY" and the CITY OF
MILPITAS, hereinafter called "MILPITAS", related to the Holiday Driving Under the
Influence Campaign – Avoid the 13 Program hereinafter called "Avoid the 13 Program"
funded by the State Office of Traffic Safety, hereinafter called "OTS."

WITNESSETH:

WHEREAS, it is necessary and desirable that City Law Enforcement Agencies
hereinafter called "City LEAs" be retained for the purpose of performing professional
services for the *Avoid the 13 Program*; and

WHEREAS, MILPITAS is one of the participating City LEAs in the *Avoid the 13
Program*;

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS
FOLLOWS:

1. Services to be Performed by MILPITAS.

During the term of **October 1, 2006 through September 30, 2007**
the Milpitas Police Department, hereinafter "Milpitas PD", shall provide DUI enforcement
staff on an overtime basis as Milpitas PD staffing levels allow for the *Avoid the 13
Program* during the holiday enforcement period of October 1, 2006 through
September 30, 2007.

MILPITAS commits to participate in the annual campaign as Milpitas PD staffing levels allow and to encourage Milpitas PD officers to emphasize DUI enforcement during all phases of the grant. MILPITAS further agrees to participate in annual sobriety checkpoints as Milpitas PD staffing levels allow.

MILPITAS agrees to adhere to the OTS grant programmatic, financial and statistical reporting and understands that adhering to the requirements is necessary to be reimbursed for DUI enforcement activities conducted during the time periods of October 1, 2006 through September 30, 2007.

2. Payment.

A. Maximum Amount. In full consideration of the services provided during holiday enforcement periods, the amount that COUNTY shall be obligated to pay for services rendered under this Memorandum of Understanding shall not exceed ONE THOUSAND NINE HUNDRED SEVENTY-FOUR DOLLARS AND FORTY-FOUR CENTS (\$1,974.44) for the term of this Memorandum of Understanding. Funds are to be used solely for reimbursement of officer overtime incurred while staffing DUI Enforcement activities in support of the *Avoid the 13 Program* during the time period of October 1, 2006 through September 30, 2007.

B. Rate of Payment. MILPITAS will receive reimbursement for officer overtime through the *Avoid the 13 Program* for a total sum not to exceed One Thousand Nine Hundred Seventy-Four Dollars and Forty-Four Cents (\$1,974.44). The amount MILPITAS will receive will be based on actual staff hours worked on DUI enforcement for the *Avoid the 13 Program* and as invoiced in accordance with Paragraph C, Invoice Requirements, below. Funding is solely for reimbursement of officer overtime incurred during DUI enforcement activities conducted during the *Avoid the 13* enforcement period.

C. Invoice Requirements. Invoices shall include dates and hours worked, officer's name, officer's overtime salary rate with allowable benefits, number of hours worked, and total dollars requested for overtime

reimbursement. The only benefit costs that OTS will reimburse are OASDI (Social Security), State Workers' Compensation and Medicare. MILPITAS and/or MILPITAS LEA overhead costs are not allowable costs and will not be reimbursed. Invoices shall also include the statistics required by OTS as outlined in Paragraph 3, Statistical Reporting.

D. Time Limit for Submitting Invoices. MILPITAS shall submit an invoice for services to the Santa Clara County Sheriff's Office, hereinafter "Sheriff's Office" for payment. COUNTY shall not be obligated to pay MILPITAS for the services covered by any invoice if MILPITAS presents the invoice to the Sheriff's Office more than forty-five (45) days after the date MILPITAS renders the services, or more than forty-five (45) days after this Memorandum of Understanding terminates, whichever is earlier.

3. Statistical Reporting

MILPITAS shall collect and report to COUNTY, the number of DUI Checkpoints paid with funds from this MOU. For each checkpoint, the following information must be collected and reported: number of vehicles passing through checkpoint, number of vehicles screened, number of field sobriety tests conducted, number of DUI arrests, number of criminal arrests, and number of vehicles impounded.

Additionally, MILPITAS shall collect and report the number of DUI arrests made, number of DUI-related traffic collisions resulting in an injury, number of people injured in a DUI-related traffic collision, number of DUI-related fatal collisions, number of fatalities resulting from a DUI-related traffic collision, and the number of DUI warrant arrests made during the enforcement period of October 1, 2006 through September 30, 2007.

4. Availability of Funds.

Payment of all services provided pursuant to this Memorandum of Understanding is contingent upon OTS funding the *Avoid the 13 Grant* with the COUNTY. In the event that OTS does not fund COUNTY's grant, COUNTY shall not be

liable for any payment whatsoever. COUNTY may terminate this Memorandum of Understanding in accordance with the provisions of Section 8 below for unavailability of OTS funds.

5. Alteration of Memorandum of Understanding.

This Memorandum of Understanding is entire and contains all of the terms and conditions agreed upon by the parties. No alteration or variation shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement shall be binding on the parties hereto.

6. Records.

A. Access. MILPITAS agrees to provide to COUNTY, the Sheriff's Office, to any Federal or State department having monitoring or reviewing authority, to Sheriff's Office authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit all records and documents necessary to determine compliance with relevant Federal, State and local statutes, rules and regulations and this Memorandum of Understanding, and to evaluate the quality, appropriateness and timeliness of services performed, for a period of at least three (3) years from the termination date of this Memorandum of Understanding, or until audit findings are resolved, whichever is greater.

B. Retention. COUNTY shall maintain and preserve in its possession all records relating to this Memorandum of Understanding for a period of at least three (3) years from the termination date of this Memorandum of Understanding, or until audit findings are resolved, whichever is greater.

7. Compliance with Applicable Laws.

All services to be performed by COUNTY and MILPITAS pursuant to this Memorandum of Understanding shall be performed in accordance with all applicable Federal, State, County and Municipal laws, ordinances and regulations.

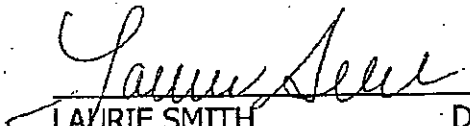
8. Term of the Agreement.

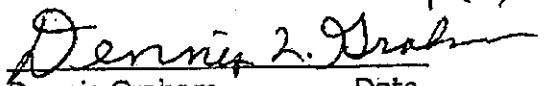
Subject to compliance with the terms and conditions of this Memorandum of Understanding, the term of this Memorandum of Understanding shall be from **OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007.** This Memorandum of Understanding may be terminated by COUNTY or MILPITAS at any time upon seven (7) days written notice to the other party.


In witness whereof, the parties have executed this Memorandum of Understanding on the day and year last written below.

COUNTY OF SANTA CLARA

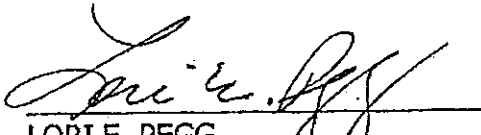
CITY OF MILPITAS


LAURIE SMITH Date
Sheriff

By  12-5-06
Dennis Graham Date
Chief of Police


Office of the County Executive Date

APPROVED AS TO FORM:


LORI E. PEGG
Lead Deputy County Counsel